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Appeal from Order No 15 of 96

Date of decision: 13/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBICA VIJAY MILLS vs GUJARAT STATE FINANCIAL

Appearance: MR MC BHATT for Petitioners .  
MR RD DAVE for Respondent No. 1

Coram: K. R. VYAS,J  
Date; 13.2.1996

ORAL JUDGEMENT

1. This appeal from order under order 43, rule 1(r) of the

Code of Civil Procedure Code is filed challenging the order passed in notice of motion, Exh. 5, by the learned City Civil Judge, Ahmedabad vacating the ex-parte interim order granted earlier. Respondent no. 1 is the Gujarat State Financial Corporation which disbursed the loan of Rs. 3,40,700/ to appellant No. 2 in the year 1975 for the purpose of purchasing land, construction of building and purchase of machinery etc. after executing the necessary documents. Appellant no. 2 could not carry out the implementation of the project and suffered loss in the business. It, therefore, could not repay the loan amount to the respondent No.1. It appears that Appellant No. 2 thereafter entered into an agreement of sale, whereby it agreed to sell the entire project, including the assets of the firm to appellant no. 1 somewhere in the year 1980. It further appears that under the agreement of sale, appellant no. 1 had taken the liability to repay the amount of loan of appellant No. 2. The said transaction of sale was also intimated to the respondent-Corporation. The appellants have therefore, filed the present suit for permanent injunction restraining the respondents from recovering the amount, and for a declaration that the claim of the respondents based on the disbursement of the amount of loan has become time barred and that, therefore, they are not entitled to initiate proceedings against the appellants for recovery of any amount of loan granted to appellant No. 2. The appellants also pray for direction to the respondents to return the title-deed of the property of Appellant No. 2.

2. Alongwith the suit, the notice of motion was also taken out, contending inter alia that the appellants have prima-facie case and that they will be put irreparable loss and inconvenience if the recovery proceedings are initiated and the amount is recovered by the respondent-corporation.

3. The learned Chamber Judge initially granted ex-parte interim injunction and issued show-cause notice. The respondents appeared in the suit and filed reply Exh. 16, inter alia, denying the material averments made in the plaint as well as the application. It is the specific case of the respondents that appellant no. 2 executed the documents whereby he agreed not to sale, transfer or in any manner handover the possession of the property mortgaged and hypothecated to the corporation to any party without prior permission of the respondent-corporation. It is contended that such a permission was not taken and it is not enough to intimate the corporation in respect of any such transfer or sale. Both the appellants, with dishonest intention to defraud the corporation, joined hands with each other and executed the sale-deed. It is further contended that the Corporation has issued notice under sec. 29 of the State Financial Corporation Act, 1951. However, the appellants have not appeared before the authority nor have they discharged their liability till date.

4. The learned trial judge after hearing the parties and considering the documents on record has vacated the ex-parte interim injunction granted earlier by his order dated 12.12.1995. Hence, the present Appeal From Order.

5. Mr. M.C. Bhatt, learned advocate appearing for the appellants has raised following contentions namely; (1) the suit is time barred under the provisions of sec. 3 read with section 27 of the Limitation Act, 1963; and (2) there is no previty of contract between the respondents and appellant no. 1 and, therefore, he is not bound by the agreement executed between the respondents and appellant no. 2, and in view of this, the corporation is not entitled to invoke the powers under section 29 of the Act. In my view, none of the submissions has any merits whatsoever and the same are required to be rejected. Section 3 of the Limitation act prescribes the bar of limitation. Section 27 of the Limitation Act prescribes the extinguishment of right to property and provides that at the determination of the period provided therein to any person for instituting a suit for possession of any property, his right to such property would be extinguished. Reading the provisions of Sections 3 and 27 of the Limitation Act, it appears that a remedy is not available to the person who approaches the court after the period of limitation but he does not lose a right to recover the property. Section 29 of the State Financial Corporation Act gives right to Financial Corporation to take over the management or the possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged hypothicated or assigned to the Financial Corporation, without even approaching the civil court. Thus, the right is independent of approaching the civil court. Therefore, in my view, assuming that the respondent-corporation was lethargic in taking action against the appellants and/or slept over its rights, the same cannot be used against it by contending that the claim is time barred. The Corporation can independently exercise the powers against the defaulter under section 29 of the Act and, therefore, the provisions of section 3, read with section 27 of the Limitation Act cannot be made applicable to the respondent-authority.

6. Regarding the second submission made by Mr. Bhatt that there is no previty of contract between the respondent-corporation and appellant no. 1 and, therefore, the appellant no. 1 is not bound by the agreement entered into between the respondents and appellant no. 2. This court, in the case of D.J. Viradiya & Anr. vs. G.S.F.C., reported in 31(2) GLR page 1250 has laid down that where a loan advanced by the corporation to a concern remains unpaid, the corporation can,

without having recourse to a court of law, take over the possession of the industrial concern and even possession can be taken over from the third party. In view of the pronouncement of law by this court, which gives complete answer to Mr. Bhatt's submission, I do not see any necessity to further elaborate the discussion.

7. In view of the fact that it is not in dispute that nothing has been paid by any of the appellants to wipe-out the loan advanced to appellant no. 2 to the extent of Rs.3,40,700/ in the year 1975-76, and, considering the conduct on the part of the appellant no. 2 in transferring the entire property in favour of the appellant No. 1 without obtaining permission from the respondent - Corporation, who are having an audacity to file a suit against the Corporation for a permanent injunction restraining the Corporation from recovering the amount by contending that the disbursement of the amount of loan is time barred and that no proceedings for recovery of loan amount are initiated against the appellants, it would hardly entitle them to get the equitable relief from this court.

8. In the result, I see no merits in this Appeal From Order and is dismissed with costs. Ad interim relief granted during the pendency of this appeal is vacated. Mr. M.C. bhatt, learned advocate, at this stage requestes to extend the ad interim relief granted earlier by this court for some time to enable him to approach the higher forum. I do not find any justification in the request of Mr. Bhatt, hence the same is rejected.

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